

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 14159 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Suresh Kenjale,
(since deceased, through LRs.) & Ors. ... Respondents

WITH
WRIT PETITION No. 728 OF 2018

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Kishor Vasantryao Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14160 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Kiran Vasantryao Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14161 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Meena P. Kenjale
(since deceased, through LRs.) & Anr. ... Respondents

WITH
WRIT PETITION No. 14162 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Nalini Vasantryao Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14163 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Milind Prabhakar Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14164 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Nitin Vishnushet Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14165 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Kuber Vasantrao Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14166 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Ramesh Vishnushet Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14167 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.
Deepak Vishnushet Kenjale & Ors. ... Respondents

WITH
WRIT PETITION No. 14168 OF 2017

Pune Jilha Krushi Utpanna Bajar Samiti ... Petitioner
Vs.

Satish Vishnusheth Kenjale & Anr. ... Respondents

Mr. Murlidhar L. Patil, for the Petitioner in all the petitions.

Mr. Dnandeo D. Shinde, for Respondent Nos. 1A to 1D.

Mr. Shirin Shaikh a/w Rupali Vasaikar, for Respondent No. 3.

CORAM : R. D. DHANUKA, J.

DATE : NOVEMBER 1, 2018

P.C.

1. By consent of parties, all these petitions were heard together and are being disposed of by this common order.

2. By these writ petitions, filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 31st October, 2017 passed below the applications filed by the original claimants under S. 151 of the Code of Civil Procedure, 1908 whereby the original claimants had sought to set aside the order of closing the evidence, though the matters were posted for pronouncement of judgments.

3. A perusal of record clearly indicates that both the parties had filed 'evidence close pursis' and also argued the

matters on the same date. The matters were listed for pronouncement of judgments on 28.11.2018. The claimants, however, filed application thereafter for setting aside the order of closing the evidence. The said applications came to be allowed by the learned trial judge on 31.10.2017. Mr. Patil, learned counsel appearing in all the petitions for the petitioners placed reliance on the decision of this Court in *Mohan Shankarrao Deshmukh Vs. Salim Abbas Khatib*¹, holding that after the matter was adjourned for pronouncement of judgment, no application could have been filed under Order IX, Rule 7 of the Code of Civil Procedure, 1908, for the purpose of recalling the order of evidence close, directing to proceed with the suit exparte. He submits that the principles laid down in the said judgment applies to the facts of this case.

4. In this case, the oral evidence was closed by filing the pursis by the parties and the matters were thereafter argued. The learned trial court directed to place the matters for pronouncement of judgment. The learned Judge could not have

¹ Order passed in Writ Petition No. 10876 of 2015, dated 5.9.2018

entertained the applications for recalling the order of closing of evidence. The principle laid down in the case of ***Mohan Deshmukh (supra)*** after adverting the judgment of the Hon'ble Supreme Court in the case of ***Arjun Singh Vs. Mohindra Kumar & Ors.***¹, applies to the facts of present cases. In my view, the order passed by the trial court thereby setting aside the order of closing the evidence after placing the matters for pronouncement of judgment, is contrary to the law laid down by the Hon'ble Supreme Court in the case of *Arjun Singh (supra)* and this Court in the case of *Mohan Deshmukh (supra)*. Hence, the following order.

ORDER

- (a) All the impugned orders setting aside the order of closing of evidence in the respective writ petitions are quashed and set aside. The applications filed by the respondent under S. 151 of the Code of Civil Procedure, 1908 are dismissed.
- (b) The learned trial court shall pronounce the judgment in the respective matters at the earliest.

¹ AIR 1964 SC 993

- (c) No orders as to costs.
- (d) The parties are directed to bring to the notice of the trial court this order. Trial court to act on an authenticated copy of this order.

Sd/-
[R. D. DHANUKA, J.]

Vinayak Halemath